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In the Supreme Court of the United States

OCTOBER TERM, 1953

MARION L. HOLLAND, AND ETHEL E. HOLLAND,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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OPINION BELOW

The opinion of the Court of Appeals (R. 341-352) is reported at 209 F. 2d 516.

JURISDICTION

The judgments of the Court of Appeals were entered January 21, 1954 (R. 352), and a petition for rehearing was denied February 5, 1954 (R. 374). The petition for a writ of certiorari was filed March 22, 1954. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1). See also

Rules 37 (b) (2) and 45(a), Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED

Petitioners were convicted of wilfully attempting to evade and defeat income taxes for the year 1948. The Government's proof of unreported income was based solely upon evidence of annual increases in net worth. The questions presented are:

1. Whether the evidence supporting the Government's net worth starting point was sufficient to make out a prima facie case of wilful attempted evasion of income taxes.

2. Whether a failure to show any specific inaccuracy in the taxpayers' books precludes resort to the net worth method to prove that the taxpayers wilfully attempted to evade taxes by failing to record and report taxable income.

3. Whether the trial court properly explained to the jury the nature of circumstantial evidence, and whether it was required to give a specific instruction, in addition to the usual instruction on reasonable doubt, that the defendants should be acquitted if the circumstantial proof was not such as to exclude every reasonable hypothesis except that of guilt.

4. Whether the trial court's instruction adequately explained to the jury the essential elements of the offense alleged in the indictment.

5. Whether the trial court's instruction on "reasonable doubt" was improper.

STATUTES INVOLVED

INTERNAL REVENUE CODE:

SEC. 41. GENERAL RULE.

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

(26 U. S. C., 1946 ed., Sec. 41.)

SEC. 145. PENALTIES.

* * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade or defeat any tax imposed

unless the jury found beyond a reasonable doubt that they had wilfully attempted to evade a substantial part of that tax. (R. 214-216.) We submit that the substance of the offense alleged was sufficiently defined and that the contention raised under this point is without merit.

5. Petitioners argue, finally (Pet. 12, 27-29), that the trial court's instruction on reasonable doubt was inaccurate and misleading because it contained the following sentence (R. 217):

> It's the kind of doubt * * * which you folks in the more serious and important affairs of your own lives might be willing to act upon.

In *Miles* v. *United States*, 103 U. S. 304, 309, error was alleged because of an instruction describing reasonable doubt as that upon which a prudent man "would feel safe to act * * * in matters of the highest concern and importance to his own dearest personal interest". This Court approved the instruction and said (p. 312):

> The language used in this case, however, was certainly very favorable to the accused, and is sustained by respectable authority. [Citing cases.]

See also, *Dunbar* v. *United States*, 156 U. S. 185, 198-199; *Wilson* v. *United States*, 232 U. S. 563, 569-570.

The trial court's instruction on reasonable doubt was ample and clear (R. 217), and the clause of which petitioners complain is sanctioned by the

by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * *

(26 U. S. C., 1946 ed., Sec. 145.)

STATEMENT

Petitioners were convicted of wilfully attempting to evade a large part of their income taxes for the calendar year 1948, in violation of Section 145(b) of the Internal Revenue Code.[1] (R. 8, 12.) The District Court imposed sentences of two years' imprisonment and a fine of $10,000 on Marion L. Holland, and a fine of $5,000 on Ethel E. Holland. (R. 12-13.) The Court of Appeals affirmed. (R. 352.)

The evidence to support the verdict may be summarized briefly as follows:

Source of unreported income.—During the years 1946, 1947 and 1948 petitioners operated a hotel in Golden, Colorado, which they acquired from Leonard DeLue on April 1, 1946. (R. 34-35.) DeLue testified that he had netted $11,230.17 from the business for the first three months of 1946 (R. 36), and that Mr. Holland told him in 1947 the

[1] The charge on which petitioners were convicted was laid in the third count of a three-count indictment. The first two counts, involving the years 1946 and 1947, were against petitioner Marion E. Holland alone, and he was acquitted on these. (R. 7-8, 12.)

business had doubled after the transfer and that he had already netted enough to have paid the $50,000 which he had originally offered for a one-half interest instead of the outright purchase ultimately agreed upon. (R. 34, 35.) Holland, however, reported a net income from the hotel of less than $10,000 for the years 1946 and 1947 combined. (R. 235, 243.)

Mrs. Holland kept all the original records of income and expenses at the hotel. She prepared a daily cash sheet which she turned over to the accountant who kept the books. She then destroyed the original cash register tapes. (R. 75, 77-78, 79-80, 151-155, 312-313, 324-325, 332.)

Various property acquisitions by the Hollands in the period 1946-1948 were characterized by gradual and periodic payments, indicative of a current source. A coffee shop adjoining the hotel was purchased in May, 1946, with a $5,000 down payment and the balance of $10,000 nine months later (R. 35); a house was purchased in October, 1946, for $6,000 down and $4,000 payable five months later (R. 46, 47); 160 acres of ranch land were purchased in 1947 for $2,000 down and $4,000 several months later (R. 59, 263, 264); another house was purchased in May, 1947, for $2,000 down with a balance of $4,000 on loan at 6% interest payable at the rate of $100 a month. (R. 63.) Other, similarly gradual acquisitions were proved. (R. 45-46, 52-53, 60.)

Assets at starting point.—Since the evidence indicated that the books did not record all the re-

ceipts, the Government computed petitioners' income by the net worth method. During the investigation of petitioners' tax returns for the years 1946, 1947 and 1948, Internal Revenue agents interviewed Mr. Holland on September 20, 1949 and on October 25, 1949. On the first occasion he stated that his attorney had advised him to give the agents the complete story of his financial affairs, and that his entire assets on April 1, 1946, just prior to purchase of the hotel, consisted of $158,000 in cash. This was composed of $104,000 which he said he had amassed and laid aside in a safe prior to December 22, 1933; $9,000 which he and his wife had saved between 1933 and 1946; and $45,000 which he had derived from sale of stocks. (R. 81-82.) At the second interview Mr. Holland told the agents practically the same story. He said that his assets as of January 1, 1946, the starting point of the Government's net worth computation, amounted to about $157,000. Of this $104,000 was cash allegedly saved prior to December 22, 1933; $9,000 was cash said to have been saved between 1933 and 1946; and the remainder represented stocks which had been acquired between 1933 and 1946 and which he sold prior to his purchase of the hotel. (R. 69-72, 300-303.)

Refuting petitioner's claim that the $104,000 in question had already been accumulated in December 1933 (R. 71), the Government showed that at that time the Hollands had a business failure and abandoned their restaurant business to creditors. (R. 75, 76.) Mr. Holland had admitted

that he had been sued by creditors prior to the time he went out of business. And he said that when his obligations became too great or the suits against him too numerous in the period prior to 1933, he formed new corporations to get a new start. (R. 75.)

There was proof that the petitioners bought furniture on the installment plan in 1933 and that the furniture was repossessed in December of that year with an unpaid balance of $92.20. (R. 103-104.) A bank president testified that petitioners had an unpaid dairy bill dating from the 1930's on which they made a compromise payment in 1946. (R. 105.) It was shown that a judgment of $506.66 against Holland for delinquent business rent for the year 1930 remained unpaid until 1950. (R. 112, 139.) And there was testimony that in 1937 or 1938 Mr. Holland had said that "he had very little money at that time", that "he had gone broke in the restaurant business in Denver", and that "he would like to make some business ventures, but he did not have the money to do so." (R. 127.)

The Government showed that during the period from December 1933 to January 1, 1946, throughout which Holland had claimed to have in his possession $104,000 or more in cash, he had worked as a vacuum cleaner salesman and as a chef at various times (including one seven-year period at a salary of $175 a month). While Mr. Holland worked as a chef in Wyoming, his wife and son lived in Denver where Mrs. Holland worked as a secretary for a small salary because "it was to their economical

advantage to remain under those conditions." (R. 76, 78.) During the period 1937-1939 and in 1941, Holland made a number of small loans ranging from $200 to about $2,000. (R. 102, 130-131.)

As has been noted above (*supra*, p. 6), Mr. Holland told the agents that he sold all his securities, which he valued at $45,000 to $50,000, before he purchased the hotel in April 1946. The admission is supported by the 1946 return which reports sale of stocks in February 1946 for a price of $52,142.78, the original cost to Mr. Holland being $29,650. (R. 239.) Further corroboration appears in the fact that, whereas Mr. Holland continually used stocks as collateral for bank loans up until February, 1946, all subsequent loans were secured by a trust deed and by assignments of life insurance policies. (R. 29-30.) Mr. Holland continually bought and sold stocks (R. 95-96), and only a few of the stocks deposited with the National Bank of Denver from time to time as collateral were still held by that bank at the beginning of 1946 (cf. R. 29-30 with Pet. 8-9). The record reference to stocks held by the Wyoming National Bank until "July 29, 1948" is clearly a mistake for "July 29, 1938." (Cf. R. 141 and Pet. 9 with R. 144, 176.)

Net worth Computation.[2]—In view of the above evidence developed by the agents' investigation,

[2] Although the record at large contains evidence of all the items included in the Government's net worth computation, no witness stated the results in summary and computed the additional taxes evaded by petitioners. The Government attempted to have this done by an expert witness, but the trial judge sustained a defense objection and told the prosecutor that he could make the arithmetical computations for the jury himself. (R. 161-169.) The charts used by the prosecutor in

the Government eliminated from the net worth computation the large cash accumulation claimed by petitioners. The investigation revealed that petitioners had bank balances amounting to $2,153.09 as of January 1, 1946, and they were credited with the cost price, $29,650, of the stock which Mr. Holland admitted he sold shortly before purchase of the hotel. Liabilities at the starting point amounted to a little less than $13,000, making the starting point net worth $19,152.59. The computation revealed unreported income for the year 1948 in the amount of $20,938.48. (R. 24, 34, 102, 111-112, 139; cf. 180-193.)

Petitioners did not take the stand in their own behalf and rested after presenting three character witnesses. (R. 193-197.)

ARGUMENT

1. Petitioners urge primarily (Pet. 2, 11, 14-18) the purely factual question whether the Government's proof was sufficient to establish the starting point on January 1, 1946, for the net worth computations which showed tax evasion. Misreading the trial court's instruction to the jury, they press substantially the same contention in their claim (Pet. 3, 12, 21-24) that the burden of proof was improperly shifted to them. However formu-

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explaining the computation to the jury (cf. R. 199-203) have not been included in the record. The prosecutor did, however, summarize all the items which went into the computation, and he stated the results in terms of unreported income, during argument on the motion for judgment of acquittal at the close of the Government's case. (R. 179-193.) Petitioners also refer to the figures given by the prosecutor in this summation. (Pet. 6.)

lated, the issue of the sufficiency of the evidence, resolved against petitioners by the jury and both courts below, could scarcely warrant certiorari even in a case more doubtful than this. In any event, the evidence was clearly sufficient.

Without repeating our summary of the evidence, it showed, from Holland's own admissions and his 1946 tax return, that the Government correctly fixed the cost of the stock he owned at the starting point at $29,650.[3] Again on Holland's own admission (*supra*, p. 6), the remainder of his assets at the starting point consisted of cash, and the problem for investigation and proof at the trial was to determine the amount of this cash. Careful investigation disclosed bank balances of $2,153.09, and petitioners were credited with these.

But petitioner Holland, while he did not testify, had told Internal Revenue agents that he had kept in his home, during the years 1933 to the starting point on January 1, 1946, over $104,000 in currency. And so the Government's detailed investigation and proof was directed to this possibility. Exhaustive testimony showed that during most of

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[3] Despite its solid support in Holland's admissions and tax return (R. 82, 239, 301-302), the Government's figure for the cost of the stock owned at the starting point is attacked (Pet. 15-16) with the speculative suggestion that there may have been much more stock than the proof accounted for. Of course, no case could ever foreclose all possibilities of such speculation. What is important, however, is that reasonable jurors could certainly find on the record in this case that possibilities of this sort had been disproved beyond a reasonable doubt. Cf. *United States* v. *Johnson*, 319 U.S. 503, 517-518; *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 254; *Glasser* v. *United States*, 315 U.S. 60, 80; *Gorin* v. *United States*, 312 U.S. 19, 32.

the period from 1933 to 1946 the petitioners were in obviously straitened circumstances. The jury could reasonably find, as it did, that Holland's statement was false and that the Government's figure showing his cash assets at the starting point was correct.

This did not result, as petitioners contend (Pet. 21-24), in shifting the burden of proof in the sense that the Government was required only to disprove the existence of the claimed $194,000 in cash. Indeed, the very portion of the charge to the jury petitioners cite in this connection refutes their contention. The trial court charged that, in order to convict, the jury must find that the petitioners "did not have that cash fund, *or any other source of the money with which they increased their net worth* except the gross receipts of this business in the taxable years in question * * *" (R. 213; emphasis added). The jury—having before it, in addition to the net worth information, evidence that petitioners had grossly understated the income from their hotel business (*supra*, pp. 4-5)—was fully justified in reaching the conclusion requisite to its verdict of guilty.

Turning on its particular facts, this result does not present the conflict petitioners assert (Pet. 11, 17) with either *Bryan* v. *United States*, 175 F. 2d 223 (C. A. 5th),[4] or *United States* v. *Fenwick*, 177 F. 2d 488 (C. A. 7th). In each of these cases there

[4] Affirmed without consideration of the present issue when Bryan petitioned for a writ of certiorari to review the refusal of the Court of Appeals to enter a judgment of acquittal instead of an order for a new trial. *Bryan* v. *United States*, 338 U.S. 552.

was a defective investigation, and the proof left strong ground for believing there might be assets the Government had not discovered. See 175 F. 2d at 226; 177 F. 2d at 491.[5] Here, there is no comparable defect, and, in the words of the test stated in the *Bryan* case itself (at p. 225), "the computations of net worth at the beginning and at the end of the questioned periods [could] reasonably be accepted as accurate."

Finally, petitioners note in the present connection (Pet. 11, 17) that the Government's pending petition for certiorari in *United States* v. *Calderon*, No. 577, this Term, cites the instant case among others (at p. 9) to show that *Calderon* is "inconsistent in principle with holdings in other circuits that the Government can make a prima facie showing of understatement of income without necessarily presenting evidence as to the exact amount of cash on hand at the starting point." In our view, that principle, which is not the primary ground of the petition in *Calderon*, is but a special application of the settled rule that "it is not incumbent on the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances

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[5] Thus, in *Bryan*, the net worth starting point showed the defendant with $107,000 in assets, which consisted almost wholly of real and personal property and only $40.70 in cash. When to this apparently lopsided picture there was added the auditor's concession that he did not know whether there was more money, the Court of Appeals found the investigation insufficiently thorough to warrant conviction. Similarly, in *Fenwick*, the United States Attorney flatly observed at the trial that there might have been assets the Government had failed to discover.

and which if untrue could readily be disproved by the production of documents or other evidence probably within the defendant's possession or control." *Rossi* v. *United States*, 289 U. S. 89, 91-92. While we think the departure from this principle in *Calderon* adds to the grounds for certiorari there, we think its application in the instant case, conforming to decisions of this Court and other courts of appeals, does not require review.

2. Petitioners argue (Pet. 11-12, 18-21) that their books and records were "adequate," that no specific inaccuracy in these materials was proved, and that resort to the net worth method to show they had evaded taxes was therefore improper.[6] This contention was not made in either of the courts below. But even apart from this defect of untimeliness, the argument, which confuses bookkeeping form with factual substance, is without merit.

The precise point of the jury's verdict in this case, approved by both courts below, is that peti-

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[6] The validity of this method of proof, which is essentially indistinguishable from the so-called "expenditures" method of proof sustained by this Court in *United States* v. *Johnson*, 319 U.S. 503, has long been recognized in the lower federal courts. *Banks* v. *United States*, 204 F. 2d 666 (C.A. 8th), certiorari denied, 346 U.S. 857; *Schuermann* v. *United States*, 174 F. 2d 397 (C.A. 8th), certiorari denied, 338 U.S. 831; *Bell* v. *United States*, 185 F. 2d 302 (C.A. 4th), certiorari denied, 340 U.S. 930; *United States* v. *Potson*, 171 F. 2d 495 (C.A. 7th); *Gendelman* v. *United States*, 191 F. 2d 993 (C.A. 9th), certiorari denied, 342 U.S. 909; *Barrow* v. *United States*, 171 F. 2d 286 (C.A. 5th); *Gariepy* v. *United States*, 189 F. 2d 459 (C.A. 6th); *Brodella* v. *United States*, 184 F. 2d 823 (C.A. 6th); *Kirsch* v. *United States*, 174 F. 2d 595 (C.A. 8th); *Pollock* v. *United States*, 202 F. 2d 281 (C.A. 5th); *Leeby* v. *United States*, 192 F. 2d 331 (C.A. 8th); *Dawley* v. *United States*, 186 F. 2d 978 (C.A. 4th); *United States* v. *Chapman*, 168 F. 2d 997 (C.A. 7th); certiorari denied, 335 U.S. 853.

tioners had been proved by circumstantial evidence to have considerably more income than their books and records showed. It was thus shown that their books were not in fact "adequate" in the only sense which is pertinent here. The books were, in a word, false.

This is not to say that there was anything wrong with petitioners' accounting methods as methods. Nor, contrary to petitioners' suggestion (Pet. 19), did the Government's case against them entail any deviation from their "method of accounting"—unless the substitution of truth for falsity be deemed such a deviation. The short of this matter (which is discussed more fully at pp. 48-54 of our brief in *Remmer* v. *United States*, No. 304, this Term, decided on another point, March 8, 1954) is that there is no ground in reason or precedent for the suggestion that taxpayers, by keeping formally "adequate" records and preventing proof of any specific omissions or inaccuracies, may preclude the Government from proving attempted tax evasion by showing substantial increases in net worth for which the only reasonable explanation is unrecorded and unreported taxable income.

3. Petitioners contend (Pet. 12, 24-25) that the trial court failed to instruct the jury adequately on the nature of circumstantial evidence, and that the court erred in refusing to give a requested instruction (R. 219, 228) to the effect that where the evidence of guilt is entirely circumstantial it must be such as to exclude every reasonable hypothesis other than that of guilt. Substantially the same contention was made in *McFee* v. *United*

States, No. 414, this Term, in which certiorari was denied on March 15, 1954. The arguments against certiorari in *McFee* (see Brief in Opposition, pp. 10-15), to which the Court is respectfully referred, apply with equal force here.[7]

Petitioners, undertaking to distinguish the *McFee* case (Pet. 24-25), concede that the court need not instruct the jury in the precise form requested by counsel. And their argument falls with this concession. For, reading beyond petitioners' partial quotation from the charge (Pet. 24), it becomes evident that the jurors were properly instructed. In addition to instructing on the presumption of innocence (R. 212) and reasonable doubt (R. 212, 217), the trial court explained at considerable length the nature of circumstantial evidence. After summarizing the theories of both the prosecution and the defense, the judge pointed out that the Government's evidence of attempted tax evasion was circumstantial, since it purported to establish unreported taxable income by proof of increases in net worth, the only reasonable source of which was current income. (R. 207-210.) He then distinguished direct from circumstantial evidence by telling the jury that they could arrive at a conviction of guilt beyond a reasonable doubt either

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[7] While the petition for certiorari was pending in the *McFee* case, the attention of the Court was called to a recent conflicting decision of the Court of Appeals for the Sixth Circuit in *Hanson* v. *United States*, 208 F. 2d 914, 916. However, the question does not appear to have been adequately considered in that case, and the two decisions upon which the Sixth Circuit relied were, as we showed in our brief in opposition in *McFee* (pp. 11, 12), either not in point or discredited by subsequent authority.

directly from the evidence or by using their intelligence and common sense to draw reasonable inferences from the facts which had been proven, and he illustrated the nature of circumstantial evidence by pointing out the various inferences that could be drawn from the proven fact that petitioner Marion Holland was a successful speculator in the stock market. (R. 210-212.) The jurors were repeatedly told that the evidence must be sufficient to establish guilt beyond a reasonable doubt before they could convict (R. 207, 210, 212, 213-214, 215, 216, 217). They were specifically instructed (R. 215):

> It is not necessary for the Government to offer direct proof of any elements of this offense. It is enough if you are satisfied beyond a reasonable doubt by the circumstantial evidence in this case in making your decision and arriving at your verdict.

Finally, stating the substance of petitioners' requested charge, the trial court told the jury (R. 213):

> If you * * * are satisfied beyond a reasonable doubt * * * that Mr. Holland and Mrs. Holland did not have that cash fund, or any other source of the money with which they increased their net worth except the gross receipts of this business in the taxable years in question, then you should bring in a verdict of guilty, if you also find * * * that they have proved to your satisfaction, beyond a reasonable doubt, all of the essential and material elements of the charges in this indictment.

In a word, reading the charge as a whole, it is clear that the jury was adequately instructed in the nature of circumstantial evidence and the need for proof beyond a reasonable doubt to sustain a conviction.

4. Petitioners complain (Pet. 13, 25-27) that the trial judge did not read the applicable statute to the jury during the course of the instruction and did not define the elements of the offense, but that he simply read the indictment and told the jury what facts they would have to find in order to return a verdict of guilty. Petitioners assert that the Second Circuit has approved this method of explaining the offense charged in the indictment,[8] whereas the Third and the Ninth Circuits have condemned it.[9] In the circumstances of this case, this argument presents no basis for review by this Court.

It may be that some conflict exists as to the propriety of reading the indictment and then telling the jury what facts constitute guilt without further definition of the offense. But all the cases cited by petitioners agree that it is sufficient if the trial judge explains the substance of the offense in his own language. It is not necessary to read the applicable statute verbatim. *Morris* v. *United States*, 156 F. 2d 525, 531 (C. A. 9th); *Wilton* v.

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[8] *United States* v. *Capitol Meats*, 166 F. 2d 537, 539, certiorari denied, 334 U.S. 812; *United States* v. *Center Veal & Beef Co.*, 162 F. 2d 766, 771.

[9] *Morris* v. *United States*, 156 F. 2d 525, 527-532 (C.A. 9th); *United States* v. *Pincourt*, 159 F. 2d 917, 918-920 (C.A. 3d); *United States* v. *Noble*, 155 F. 2d 315, 316-318 (C.A. 3d); *United States* v. *Levy*, 153 F. 2d 995, 998-999 (C.A. 3d).

United States, 156 F. 2d 433, 436 (C. A. 9th); and see the passage from *United States* v. *Pincourt*, 159 F. 2d 917, 919 (C. A. 3d), quoted by petitioners (Pet. 27, fn. 4).

The essential elements of the offense alleged in this case are three: (1) an additional tax owing; (2) an attempt to evade payment of that tax; and (3) wilfulness. See *Spies* v. *United States*, 317 U. S. 492, 497-499. All of these elements were explained to the jury during the course of the instruction. At the outset the judge read the various counts of the indictment, which embodied the language of the applicable statute, and stated the amounts of income taxes allegedly evaded. (R. 205-206.) After outlining the factual issues raised by both the defense and the prosecution and describing the nature of circumstantial evidence (R. 208-212), the judge said (R. 212-213):

> The issue in this case is whether or not these defendants filed those income tax returns, reporting the income on those returns and the tax computed from it, knowingly and wilfully not including gross receipts from the business which the Government claims they earned, and which the Government claims they didn't report.

Thereafter, the judge explained the element of wilfullness required to constitute a criminal attempt to defeat and evade income taxes, explained that some additional tax must be found to be due, and explained that petitioners could not be convicted

Miles case. In addition, the objection to the definition of reasonable doubt in the trial court was based upon an entirely different argument. (R. 221-222.) The present contention is without substance.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL 1954.

☆ U. S. GOVERNMENT PRINTING OFFICE 1954 200993 12-14